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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

SIMON AND SIMON, PC d/b/a  
CITY SMILES and VIP DENTAL  
SPAS, individually and on behalf of  
all others similarly situated,

Plaintiffs,

v.

ALIGN TECHNOLOGY, INC.,

Defendant.

Case No. 3:20-cv-03754-VC

**DECLARATION OF APRIL D.  
LAMBERT IN SUPPORT OF  
PLAINTIFFS' OPPOSITION TO  
ALIGN'S MOTION FOR SUMMARY  
JUDGMENT AND *DAUBERT* MOTION  
TO PRECLUDE EXPERT TESTIMONY**

Date: January 25, 2023  
Time: 10:00 A.M.  
Place: Courtroom 4, 17<sup>th</sup> floor  
Judge: Hon. Vince Chhabria

I, April D. Lambert, declare as follows:

1. I am attorney with the Radice Law Firm, Co-Lead Counsel for the Direct Purchaser Plaintiffs (“Plaintiffs”) in the above-referenced case. I am licensed to practice law in the State of Illinois and have been admitted to this court *pro hac vice* (Dkt. No. 53).
2. I submit this declaration and exhibits in support of Plaintiffs Opposition to Align’s Motion for Summary Judgment and *Daubert* Motion to Preclude Expert Testimony.
3. Attached hereto as **Exhibit 1** is a true and correct copy of the Expert Rebuttal Report of Hal J. Singer, Ph. D, dated June 20, 2023.
4. Attached hereto as **Exhibit 2** is a true and correct copy of excerpts of the transcript of the deposition of Tim Mack, taken February 24, 2023.
5. Attached hereto as **Exhibit 3** is a true and correct copy of excerpts of the transcript of the deposition of Joseph Hogan, taken January 13, 2023.
6. Attached hereto as **Exhibit 4** is a true and correct copy of excerpts of the transcript of the deposition of Dr. Kinnery Patel, taken March 8, 2023.
7. Attached hereto as **Exhibit 5** is a true and correct copy of a Jan 2, 2014, email from T. Mack to K. Kling et al re: interoperability with the 3M True Definition Scanner (Dep. Ex. 1364) produced beginning at ALIGNAT-PURCH00488031.
8. Attached hereto as **Exhibit 6** is a true and correct copy of a Jan. 14, 2014, internal Align email announcing interoperability with 3M True Definition scanner produced beginning at ALIGNAT-PURCH00005203.
9. Attached hereto as **Exhibit 7** is a true and correct copy of an Oct. 31, 2015 internal Align email discussing interoperability with Sirona’s Cerec Omnicam produced

beginning at ALIGNAT-PURCH00004187.

10. Attached hereto as **Exhibit 8** is a true and correct copy of the Transcript of Align Q2 2017 Earnings Call produced beginning at ALIGNAT-PURCH00874928.

11. Attached hereto as **Exhibit 9** is a true and correct copy of the Transcript of Align Q1 2015 Earnings Call produced beginning at 3Shape\_Anitrust\_Simon\_00004459.

12. Attached hereto as **Exhibit 10** is a true and correct copy of a March 16, 2016, email from A. Ganguly to L. Rasovsky, K. Kling, and R. Pascaud re: Align and 3Shape produced beginning at ALIGNAT-PURCH00133016.

13. Attached hereto as **Exhibit 11** is a true and correct copy of a 2015 Align presentation produced beginning at ALIGNAT-PURCH00109211.

14. Attached hereto as **Exhibit 12** is a true and correct copy of the Align Consolidated Segment Income Statement for the Period of 2017 to 2020 produced beginning at ALIGNAT-PURCH00001891.

15. Attached hereto as **Exhibit 13** is a true and correct copy of a Dec. 28, 2019 email from J. Hogan to J. Morici re: Invisalign ASP is too high?? produced beginning at ALIGNAT-PURCH00524842.

16. Attached hereto as **Exhibit 14** is a true and correct copy of a Aug. 26, 2016, Draft Term Sheet produced beginning at ALIGNAT-PURCH00004881.

17. Attached hereto as **Exhibit 15** is a true and correct copy of a March 31, 2016, email chain among J. Hogan, R. Pascaud, and A. Ganguly re: 3Shape/Align workflow discussions produced beginning at ALIGNAT-PURCH00005172.

18. Attached hereto as **Exhibit 16** is a true and correct copy of a March 30, 2016, email from R. Pascaud to J. Hogan re: 3shape/align collaboration ideas produced beginning at

ALIGNAT-PURCH00005093.

19. Attached hereto as **Exhibit 17** is a true and correct copy of an April 2016 White Paper: Digital Partnerships & Workflows: Vision for the Future, by A. Ganguly produced beginning at ALIGNAT-PURCH00155869.

20. Attached hereto as **Exhibit 18** is a true and correct copy of an Oct. 24, 2015 email from J. Hogan to R. Pascaud re: 3Shape produced beginning at ALIGNAT-PURCH01035169.

21. Attached hereto as **Exhibit 19** is a true and correct copy of an Align 2017 presentation, “3rd-Party Scanners Intraop: Status and Next Steps” produced beginning at ALIGNAT-PURCH00185089.

22. Attached hereto as **Exhibit 20** is a true and correct copy of an Align 2017 presentation, “3rd-Party Scanners Intraop: Status and Next Steps” produced beginning at ALIGNAT-PURCH00227106.

23. Attached hereto as **Exhibit 21** is a true and correct copy of a January 5, 2017 email from J. Hogan to R. Pascaud re: Meeting – Shape f/up produced beginning at ALIGNAT-PURCH00004650.

24. Attached hereto as **Exhibit 22** is a true and correct copy of an Align presentation re: Exocad Background Information produced beginning at ALIGNAT-PURCH00044276.

25. Attached hereto as **Exhibit 23** is a true and correct copy of a July 22, 2017, email from A. Ganguly re: Dashboard review – July MLT (pre-read) produced beginning at ALIGNAT-PURCH00435052.

26. Attached hereto as **Exhibit 24** is a true and correct copy of a May 24-25, 2017, email chain among A. Ganguly, K. Kling, and R. Pascaud re: Trios vs Element effect on Invisalign produced beginning at ALIGNAT-PURCH01551611.

27. Attached hereto as **Exhibit 25** is a true and correct copy of a Sept. 15, 2015, email from S. Beuchaw of Morgan Stanley to S. Stacy of Align re: Questions/Topics produced beginning at ALIGNAT-PURCH00913072.

28. Attached hereto as **Exhibit 26** is a true and correct copy of a February 15, 2016, email from Dr. M. Hodge of Heartland Dental re: Heartland & Align produced beginning at ALIGNAT-PURCH00497057.

29. Attached hereto as **Exhibit 27** is a true and correct copy of an Oct. 16, 2015, email from R. Pascaud re: Its Time to Compete ! produced beginning at ALIGNAT-PURCH00544498.

30. Attached hereto as **Exhibit 28** is a true and correct copy of an Oct. 24, 2015, email chain between R. Pascaud, R. Ganguly, and J. Hogan re: 3Shape (Dep. Ex. 0217) produced beginning at ALIGNAT-PURCH01473853.

31. Attached hereto as **Exhibit 29** is a true and correct copy of an Jan. 22, 2018, email chain among R. Pascaud, J. Hogan, S. Beard, and J. Tay re: 3Shape (Dep. Ex. 0231) produced beginning at ALIGNAT-PURCH00441297.

32. Attached hereto as **Exhibit 30** is a true and correct copy of a March 1, 2017 email chain among K. Kling, C. Puco, R. Pascaud, J. Tay, and S. Beard re: Charging for Invisalign produced beginning at ALIGNAT-PURCH00684565.

33. Attached hereto as **Exhibit 31** is a true and correct copy of a Nov. 17, 2017 email from K. Kling re: Intraoral Scanning Preferences Survey – Results, 1st Draft produced beginning at ALIGNAT-PURCH00109420.

34. Attached hereto as **Exhibit 32** is a true and correct copy of a Nov. 25, 2015, email chain among J. Hogan, R. Pascaud, and D. White re: 2016 iTero Plan produced beginning at

ALIGNAT-PURCH00540982.

35. Attached hereto as **Exhibit 33** is a true and correct copy of a Dec. 1, 2015, email chain among J. Hogan, R. Pascaud, and D. White re: 2016 iTero Plan produced beginning at ALIGNAT-PURCH00540564.

36. Attached hereto as **Exhibit 34** is a true and correct copy of a Nov. 17, 2017, email from K. Kling re: Intraoral Scanning Preferences Survey – Results, 1st Draft produced beginning at ALIGNAT-PURCH00441778.

37. Attached hereto as **Exhibit 35** is a true and correct copy of a Dec. 20, 2017, press release re: TOI from Align produced beginning at ALIGNAT-PURCH00007140.

38. Attached hereto as **Exhibit 36** is a true and correct copy of a Q/A regarding Align Technology punishing dentists and orthodontists by sudden termination of Invisalign interoperability from 3Shape produced beginning at ALIGNAT-PURCH00880823.

39. Attached hereto as **Exhibit 37** is a true and correct copy of a Feb. 18-19, 2019, email chain among C. Puco, et al re: Conversation with Dirk Wolter produced beginning at ALIGNAT-PURCH00004573.

40. Attached hereto as **Exhibit 38** is a true and correct copy of a Feb. 21, 2018, email from A. Ganguly re: 3Shape produced beginning at ALIGNAT-PURCH00145367.

41. Attached hereto as **Exhibit 39** is a true and correct copy of a 2017 Align presentation titled 3Shape Interoperability Analysis produced beginning at ALIGNAT-PURCH00187651.

42. Attached hereto as **Exhibit 40** is a true and correct copy of a June 5, 2019, email chain between J. Hogan and Y. Shaked re: Litigation Taking a Toll on 3Shape Financials (Dep. Ex. 0230) produced beginning at ALIGNAT-PURCH00648134.

**43.** Attached hereto as **Exhibit 41** is a true and correct copy of an April 6, 2018, email from M. Li to D. Stubbs re: iTero Q1 revenue (Dep. Ex. 0046) produced beginning at ALIGNAT-PURCH00330946.

**44.** Attached hereto as **Exhibit 42** is a true and correct copy of a May 14, 2018, email from A. Hyldal of 3Shape re: Opportunity Assessment: the US Clear Aligner market produced beginning at 3Shape\_Antitrust\_Simon\_00161194.

**45.** Attached hereto as **Exhibit 43** is a true and correct copy of an Editorial by 3Shape's L.C. Lund re: Setting the Story Straight on TRIOS and Invisalign produced beginning at 3Shape\_Antitrust\_Simon\_00149682.

**46.** Attached hereto as **Exhibit 44** is a true and correct copy of the Transcript of Align's Q&A session at AAO conference produced beginning at ALIGNAT-PURCH01862421.

**47.** Attached hereto as **Exhibit 45** is a true and correct copy of a May 17, 2018, email from L.C. Lund to L.T. Gordon at AAO re: Treating Corporate members equally produced beginning at 3Shape\_Antitrust\_Simon\_00149676.

**48.** Attached hereto as **Exhibit 46** is a true and correct copy of 3Shape Internal Guidance for Spokespeople, May 22, 2018, produced beginning at 3Shape\_Antitrust\_Simon\_00506390.

**49.** Attached hereto as **Exhibit 47** is a true and correct copy of a Nov. 17, 2017, email chain among K. Kling et al re: 3Shape Invisalign Data by Region produced beginning at ALIGNAT-PURCH00692797.

**50.** Attached hereto as **Exhibit 48** is a true and correct copy of a Nov. 15, 2017, email from R. Pascaud to J. Hogan re: Urgent Data Request – 3rd Party Scanner Sales produced beginning at ALIGNAT-PURCH01499189.

**51.** Attached hereto as **Exhibit 49** is a true and correct copy of a Feb. 13, 2018, email from R. Walker re: 3Shape Business (Dep. Ex. 646) produced beginning at ALIGNAT-PURCH00266509.

**52.** Attached hereto as **Exhibit 50** is a true and correct copy of an Apr. 24, 2018 email from J. Hogan to C. Puco re: Demand Interoperability between Invisalign and TRIOS produced beginning at ALIGNAT-PURCH01625087.

**53.** Attached hereto as **Exhibit 51** is a true and correct copy of the Expert Rebuttal Report of Dr. Jay S. Grossman, dated June 30, 2023.

**54.** Attached hereto as **Exhibit 52** is a true and correct copy of excerpts of the deposition transcript of Mu Li, taken Dec. 20, 2022.

**55.** Attached hereto as **Exhibit 53** is a true and correct copy of excerpts of te deposition transcript of Mu Li, taken Dec. 20, 2022.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 22nd day of December, 2023, in Jacksonville, Florida.

Dated: December 22, 2023

/s/ April D. Lambert



**ATTESTATION**

I, Joseph R. Saveri, am the ECF user whose identification and password are being used to file the foregoing document. In compliance with Civil L.R. 5-1(i)(3), I hereby attest that concurrence in the filing of this document has been obtained from each of the other signatories.

Date: December 22, 2023

/s/ Joseph R. Saveri